

Message Text

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TO AMEMBASSY BRUSSELS

AMEMBASSY ROME

UNCLAS STATE 126571

FOLLOWING REPEAT STATE 126571 SENT OTTAWA MONTREAL BERN BONN
PARIS LONDON THE HAGUE STOCKHOLM OSLO NAIROBI KINSHASA
KHARTOUM LAGOS DAKAR BOGOTA SAN JOSE SANTIAGO GUATEMALA
BUENOS AIRES BRASILIA MEXICO MONTEVIDEO JAKARTA TOKYO
CANBERRA WELLINGTON NEW DELHI DOHA CAIRO TUNIS BEIRUT INFO
MELBOURNE MOSCOW DATED MAY 30.

QUOTE

UNCLAS STATE 126571

MONTREAL FOR US REP ICAO

E.O. 11652: N/A

TAGS:PORG, EAIR, ICAO

SUBJECT:ICAO DIPLOMATIC CONFERENCE ON REVISION OF HAGUE
PROTOCOL TO THE WARSAW CONVENTION, MONTREAL,
SEPT 1975

REFTEL:STATE 069955 (NOTAL)

SUMMARY: MAJOR DIPLOMATIC CONFERENCE ON AIR LAW IS TO
BE HELD IN MONTREAL IN SEPT 1975. US SEEKS BROAD
UNCLASSIFIED

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CO-SPONSORSHIP OF A 3 PART PROPOSAL TO BE CIRCULATED
IN ADVANCE OF SEPT CONFERENCE. IF REACTIONS FROM ADDRESSEE
POSTS ARE POSITIVE, WE WOULD SEEK TO DEVELOP PROPOSAL
OVER NEXT MONTH. SPECIAL INSTRUCTIONS FOR SOME INDIVIDUAL

POSTS ARE INCLUDED. THIS CABLE ALSO CONTAINS TEXTS OF THREE BASIC DOCUMENTS RELATED TO PROPOSAL. END SUMMARY

1. BACKGROUND: DIPLOMATIC CONFERENCE SCHEDULED FOR 3 WEEKS IN SEPT, 1975 AT MONTREAL, IS TO ADOPT REVISIONS TO THE HAGUE PROTOCOL TO THE WARSAW CONVENTION. (FORMAL TITLE IS THE WARSAW CONVENTION AS AMENDED AT THE HAGUE, 1955; HEREINAFTER REFERRED TO AS "HAGUE".) REVISIONS TO BE ADOPTED CONCERN CARRIAGE OF CARGO. HAGUE IS A BASIC

INTERNATIONAL TREATY ESTABLISHING RULES FOR INTERNATIONAL AIR CARRIAGE OF PASSENGERS, BAGGAGE, AND CARGO, AND THE LIABILITY OF AIR CARRIERS IN THE EVENT OF DEATH OR INJURY TO PASSENGERS, AND LOSS, DAMAGE OR DELAY IN DELIVERY OF BAGGAGE AND CARGO. PASSENGER AND BAGGAGE PROVISIONS WERE REVISED AT GUATEMALA IN 1971 IN THE FORM OF A PROTOCOL TO HAGUE. (FORMAL TITLE OF THESE REVISIONS IS THE WARSAW CONVENTION AS AMENDED AT THE HAGUE, 1955, AND AT GUATEMALA CITY, 1971; HEREINAFTER, "GUATEMALA.") GUATEMALA CONTAINS CARGO PROVISIONS OF HAGUE. TO DATE, ONLY COLUMBIA (1974) AND COSTA RICA (1972) HAVE RATIFIED GUATEMALA. AS EXPLAINED BELOW, IT NEEDS SOME FURTHER REVISION BEFORE IT CAN BE BROADLY ACCEPTABLE AND HAS A CHANCE TO ENTER INTO FORCE.

2. US HAS NOT SUBMITTED GUATEMALA TO DEBATE FOR ADVICE

AND CONSENT TO RATIFICATION. GUATEMALA PROVIDES THAT STATES MAY ADOPT SPECIAL "DOMESTIC SUPPLEMENT" TO PROVIDE BENEFITS TO THEIR CITIZENS WHO ARE KILLED OR INJURED ON FLIGHTS ADDITIONAL TO RIGHTS GIVEN IN GUATEMALA. SYSTEM FOR A US "DOMESTIC SUPPLEMENT" WAS COMPLETED EARLY THIS YEAR. HOWEVER, IN MEANTIME, THE PROVISION IN GUATEMALA ESTABLISHING LIMITS OF LIABILITY, WHICH IS EXPRESSED IN TERMS OF A UNIT OF ACCOUNT CALLED POINCARÉ GOLD FRANC--BASED ON OFFICIAL PRICE OF GOLD--HAS BECOME UNSATISFACTORY (POINCARÉ GOLD FRANC IS ALSO USED TO EXPRESS LIMITS IN UNCLASSIFIED

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HAGUE.) SUBMISSION OF GUATEMALA TO SENATE HAS TO AWAIT AMENDMENT OF THIS PROVISION. AN ADDITIONAL CHANGE IN GUATEMALA IS ALSO NEEDED TO PERMIT STATES WHICH BECOME PARTY TO GUATEMALA TO BE FREED FROM THE CARGO PROVISIONS IT CONTAINS, NAMELY, THE OLD HAGUE CARGO PROVISIONS, WHEN ACCEPTING THE NEW PROVISIONS ON CARGO THAT WE EXPECT WILL BE ADOPTED AT MONTREAL (SEE PARA 1).

3. AT APRIL ICAO LEGAL SUBCOMMITTEE AND SPECIAL ICAO COUNCIL WORKING GROUP MEETINGS AT MONTREAL, US RAISED ABOVE POINTS, PRIMARILY INFORMALLY. THEY WERE REGARDED AS BEYOND THE TERMS OF REFERENCE OF THE SPECIFIC MEETINGS IN SESSION, BUT DELEGATIONS IN LARGE PART WERE SYMPATHETIC TO NEED FOR CHANGES, AND ENCOURAGED US TO PURSUE

PROPOSALS WITH THEIR GOVERNMENTS THROUGH DIPLOMATIC CHANNELS AFTER CONCLUSION OF MEETINGS. IN ADDITION, DELEGATIONS AGREED THAT CERTAIN STATEMENTS OF US POSITIONS SHOULD BE ANNEXED TO OFFICIAL REPORT OF COUNCIL WORKING GROUP. INCLUDED BELOW ARE TEXTS OF US STATEMENT ON GOLD PROBLEM, WHICH IS AN ANNEX TO WORKING GROUP REPORT; OUTLINE OF PROPOSAL USING SDRS AS REPLACEMENT FOR POINCARE GOLD FRANC, WHICH WAS CIRCULATED ONLY INFORMALLY TO DELEGATIONS AT MONTREAL MEETINGS; AND LETTER OF 7 APRIL 1975 TO THE DEPARTMENT FROM INTERNATIONAL AIR CARRIERS SETTING FORTH CARRIER PROBLEMS WITH GOLD CLAUSE AND NEED FOR MODIFICATION AT SEPT DIPLOMATIC CONFERENCE, WHICH WAS CIRCULATED ONLY INFORMALLY BY US TO DELEGATIONS AT MONTREAL.

4. REPRESENTED AT LEGAL SUBCOMMITTEE WERE ARGENTINA, BELGIUM, CANADA, FRANCE, FRG, INDIA, ITALY, JAPAN, NETHERLANDS, NIGERIA, NORWAY, USSR, UKLN US. ALL BUT USSR (WHICH STATED IT "COULD NOT BE HELPFUL") ATTENDED AN INFORMAL SESSION CONVENED BY US, WHICH WAS ALSO ATTENDED BY A MEMBER OF BRAZIL'S MISSION AT ICAO, ON GOLD CLAUSE QUESTION. WORKING GROUP MEMS INCLUDED ARGENTINA, FRANCE, ITALY, JAPAN, NIGERIA, SWEDEN, USSR, US.

5. BASIC US POSITION IS THAT THE SEPT DIPLOMATIC CONFERENCE SHOULD DEAL WITH THE GOLD AND CARGO PROBLEMS IN GUATEMALA BY ADOPTING APPROPRIATE AMENDMENTS TO IT, AS WELL AS ADOPT NEW CARGO PROVISIONS TO HAGUE. WITH RESPECT TO GOLD CLAUSE, AMENDMENT SHOULD USE SDRS GENERALLY FOLLOWING OUTLINE REPRODUCED BELOW. WITH UNCLASSIFIED

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RESPECT TO CARGO, AMENDMENT OF GUATEMALA SHOULD ACCOMPLISH CHANGE DESCRIBED IN LAST SENTENCE OF PARAGRAPH 2. WITHOUT DESCRIBED AMENDMENTS TO GUATEMALA, IN ADDITION TO ADOPTION OF NEW CARGO PROVISIONS TO HAGUE, IT IS OUR VIEW THAT THE SEPT CONFERENCE COULD NOT BE SUCCESSFUL: PRESENT TEXT OF GUATEMALA DOES NOT STAND A CHANCE OF ENTRY INTO FORCE WITHOUT CHANGE, AND GOLD PROBLEM EXISTS IN ANY EVENT FOR NEW CARGO PROVISIONS TO HAGUE, I CE HAGUE PRESENTLY USES GOLD FRANC AS DOES GUATEMALA. FURTHER, WE BELIEVE THERE IS SUBSTANTIAL RISK OF FAILURE OF SEPT CONFERENCE UNLESS PREPARATION OF A PROPOSAL BEGINS NOW, ALLOWING SOMETIME FOR CIRCULATION TO STATES FOR STUDY IN ADVANCE OF MONTREAL CONFERENCE, AND UNLESS SUCH A PROPOSAL OBTAINS BROAD CO-SPONSORSHIP. ALMOST NO PREPARATORY WORK IN THESE TWO AREAS HAS BEEN DONE TO DATE, AND WE COULD NOT BE OPTIMISTIC ABOUT RESULTS IF SEPT CONFERENCE FACED THEM AS ALTOGETHER NEW ISSUES, OR AS ISSUES ADVANCED ONLY BY ONE COUNTRY OR ONE REGION.

6. ACTION REQUESTED. ACTION ADDRESSES ARE REQUESTED TO CONTACT HOST GOVERNMENT OFFICIALS AT LEVEL CONSIDERED APPROPRIATE TO DETERMINE WHETHER HOST GOVERNMENT WOULD CONSIDER CO-SPONSORING A 3-PART PROPOSAL WHICH COULD

BE CIRCULATED TO GOVERNMENTS IN ADVANCE OF SEPT CONFERENCE. POINTS TO BE COVERED INCLUDE: (1) PROCEDURAL PROPOSAL THAT SEPT CONFERENCE, IN ADDITION TO TASK OF ADOPTING NEW CARGO PROVISIONS TO HAGUE AMEND GUATEMALA IN TWO RESPECTS; (2) SUBSTANTIVE PROPOSAL THAT GOLD CLAUSE IN GUATEMALA BE REPLACED WITH SDR CLAUSE FOLLOWING OUTLINE REPRODUCED BELOW; (3) SUBSTANTIVE PROPOSAL ACCOMPLISHING CHANGE IN GUATEMALA DESCRIBED IN LAST SENTENCE OF PARA 2. (IF A DRAFT TEXT ON POINT 3 COULD NOT BE AGREED PRIOR TO THE SEPT CONFERENCE, IT WOULD BE SATISFACTORY TO HAVE AGREEMENT ON THE OBJECTIVE ALONE. AS A MECHANICAL MATTER, THERE ARE MANY WAYS IN WHICH THE SUBSTANTIVE RESULT COULD BE ACHIEVED.)

7. WE WOULD APPRECIATE HOST GOVERNMENT RESPONSE AT SOONEST POSSIBLE DATE GIVEN SHORT PERIOD OF TIME AVAILABLE FOR DEVELOPMENT AND CIRCULATION OF A PROPOSAL. FORM OF OUR FOLLOW-UP DEPENDS UPON THE NATURE OF THE REACTIONS REPORTED.

8. FOR BRASILIA: COPY OF OUTLINE PROPOSAL ON SDRS WAS UNCLASSIFIED

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GIVEN TO BRAZIL ICAO MISSION REPRESENTATIVES (SEIXAS AND JAKUBOVICZ) FOR TRANSMISSION TO BRASILIA. THEY ENCOURAGED US TO FOLLOW UP WITH REQUEST FOR CO-SPONSORSHIP IN BRASILIA.

9. FOR BUENOS AIRES: ARGENTINA IS A KEY COUNTRY FOR SUCCESS OF THIS INITIATIVE. BASED ON INFORMAL CONVERSATIONS AT MONTREAL WITH PERUCCHI AND GUTIEZ, WE ARE HOPEFUL THEIR SUPPORT CAN BE DEVELOPED. BECAUSE GUTIEZ IS PRESIDENT OF ICAO LEGAL COMMITTEE, HE MAY KEENLY APPRECIATE NEED TO ADVANCE PROPOSAL IN ORDER TO MINIMIZE RISK OF A SEPT CONFERENCE FAILURE, WHERE BASIC DOCUMENTS BEFORE CONFERENCE ARE A PRODUCT OF LEGAL COMMITTEE.

10. FOR MONTEVIDEO: BRUCE SELFON, CHIEF COUNSEL'S OFFICE, FEDERAL AVIATION ADMINISTRATION, HAS BEEN IN TOUCH BY LETTER WITH DR. EDUARDO GAGGERO, DIRECTOR GENERAL OF CIVIL AVIATION, ABOUT OBJECTIVES OF US INITIATIVE.

11. FOR LAGOS: J. B.. AJALA, LEGAL ADVISER, TRANSPORT MINISTRY, WAS SYMPATHETIC TO US POSITIONS AT MONTREAL (THOUGH NON-COMMITTAL ABOUT NIGERIA'S POSITION), AND WILL BE EXPECTING CO-SPONSORSHIP REQUEST.

12. FOR NEW DELHI: B. S. GIDWANI, DIRECTOR GENERAL, TOURISM, SEEMED ENCOURAGING AT MONTREAL MEETINGS. WE WOULD EXPECT INDIAN POSITION TO BE KEY AT SEPT CONFERENCE.

13. FOR OSLO, STOCKHOLM, THE HAGUE, LONDON, PARIS, OONN, BERN: WE UNDERSTAND INTRA-EUROPEAN MEETING ON AVIATION MATTERS WILL BE HELD JUNE 24-25. ON ASSUMPTION THESE COUNTRIES, AND JAPAN AND CANADA, CAN SUPPORT CO-SPONSORED PROPOSAL, WE BELIEVE A DAY OR TWO TAGGED ON TO THIS MEETING (OR PRECEDING IT) WOULD BE CRITICAL TO PRODUCE AT LEAST A FIRST DRAFT OF AGREED AMENDMENTS FOR GUATEMALA.

REQUEST EMBASSIES SOUND OUT HOST GOVERNMENTS ABOUT ADDING TO TIME, AGENDA, AND MEMBERSHIP AT MEETING (OR PLANNING SEPARATE ONE AT ABOUT THIS TIME), AS OPPORTUNITY TO GET CO-SPONSORED PROPOSAL LAUNCHED. (ARNOLD KEAN, UK, HAS ADVISED AGAINST SUCH A MEETING UNTIL A "REASONABLE TIME" AFTER JUNE 24-25 INTRA-EUROPEAN SESSION. OUR VIEW IS THAT IF WE WAIT ANY LATER THEN THE LAST WEEK OF JUNE, THERE WILL BE NO TIME TO PRODUCE AGREED TEXT OF A PROPOSAL BEFORE SEPTEMBER CONFERENCE. SOME PERIOD OF TIME MUST BE ALLOTTED FOR CIRCULATION OF A FIRST DRAFT

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FOR BROAD CO-SPONSORSHIP, I.E., TO AFRICAN, ASIAN, LATIN AMERICAN CAPITALS, AND THEN TIME FOR FINALIZING IT. WE ASSUME AFTER MID-JULY THAT VACATION SCHEDULES WOULD MAKE IT VERY DIFFICULT FOR PRINCIPALS TO BE IN CONTACT TO FINALIZE ANY PROPOSAL; IN ANY EVENT, KEAN'S TIME FRAME WOULD MAKE IT VERY LATE TO CIRCULATE PROPOSAL GENERALLY TO GOVERNMENTS WITH HOPE THAT IT WOULD RECEIVE ADEQUATE STUDY IN CAPITALS PRIOR TO BEGINNING OF CONFERENCE. IF MEETING TO DEVELOP PROPOSAL CANNOT BE ADDED TO INTRA-EUROPEAN MEETING, WE WOULD HOPE LATTER COULD TAKE PLACE EARLIER, PRESERVING JUNE 24-25 AS LATEST POSSIBLE DATE FOR MEETING TO DRAFT A PROPOSAL.) AMONG EUROPEAN REPS AT MONTREAL MEETINGS WERE A. MELCHIOR, DIRECTOR OF AVIATION ADMINISTRATION (BRUSSELS), O. H. FAULL, CHIEF, AIR LAW SECTION, MINISTRY OF TRANSPORT (BONN); J. J. T. ENTZINGER BENNINK, LEGAL BUREAU, CIVIL AVIATION DEPARTMENT (THE HAGUE); P. LODRUP, PROFESSOR OF LAW, OSLO UNIVERSITY (OSLO); KEAN, UK; B. NILSSON, LEGAL ADVISER, JUSTICE MINISTRY (STOCKHOLM). PARIS SHOULD CONTACT GUILLAUME. AT MONTREAL, CANADA, JAPAN, SWEDEN, NORWAY, AND UK INDICATED THEY COULD SUPPORT SDR PROPOSAL. NETHERLANDS APPEARED SYMPATHETIC. FRANCE, ITALY, AND BELGIUM MADE NO COMMITMENTS.

14. FOR NAIROBI, BOGOTA, JAKARTA, SAN JOSE: KENYA REP AT MOST RECENT ICAO LEGAL COMMITTEE MEETING (OCT 1974), WHICH APPROVED CARGO REVISIONS TO HAGUE TO BE BEFORE SEPT DIPLOMATIC CONFERENCE, WAS R. S. NYAGA, SECRETARY, EAST AFRICA

CIVIL AVIATION BOARD. COLUMBIAN REP WAS D. PARDO TOVAR. INDONESIAN CHIEF REP WAS D. SUWARDI, SECRETARY DIRECTORATE OF AIR TRANSPORT. COSTA RICAN REP WAS J. F. DIAZ, LAWYER, TRANSPORT MINISTRY.

15. FOR TOKYO: N. NAKANO, JAPANESE REP TO ICAO COUNCIL, AND JAPANESE REP AT APRIL MONTREAL MEETINGS, INDICATED INFORMALLY JAPAN COULD CO-SPONSOR ON ALL 3 POINTS. AT INFORMAL MEETING ON GOLD, NAKANO ANNOUNCED JAPAN SUPPORTED REPLACING GOLD FRANC WITH SDRS. JAPAN JOINED WITH SWEDEN AND US IN COUNCIL WORKING GROUP ON A PAPER OUTLINING POSSIBLE ALTERNATIVE SOLUTIONS COVERING POINT 3, WHICH BECAME AN ANNEX TO THE OFFICIAL REPORT OF

THE WORKING GROUP.
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16. FOR OTTAWA: CANADA REPS AT INFORMAL MEETING ON GOLD ANNOUNCED THAT CANADA SUPPORTED REPLACEMENT OF GOLD FRANC WITH SDRS. THEY ASKED US TO CIRCULATE A FIRST DRAFT OF A PROPOSAL ON SDRS FOR POSSIBLE CO-SPONSORSHIP.

17. FOR KINSHASA: MR. MUSHOBOKWA, CHIEF OF TREATY DIVISION, DEPARTMENT OF FOREIGN AFFAIRS, HAS ACTIVELY REPRESENTED ZAIRE AT RECENT ICAO AIR LAW MEETINGS, AND BEEN HELPFUL TO US.

18. FOR CANBERRA: YOU SHOULD BRIEF BOB EDWARDS. AUSTRALIAN EMBASSY HAS BEEN ADVISED THAT THIS INITIATIVE WAS COMING.

19. FOR WELLINGTON: IN VIEW OF HIS ACTIVE ROLE IN ACHIEVING ADOPTION OF GUATEMALA PROTOCOL AT DIPLOMATIC CONFERENCE IN 1971, YOU SHOULD, UNLESS INAPPROPRIATE, BRIEF PETER GRAHAM. J. C. KENNEDY-GOOD, LEGAL OFFICER, CIVIL AVIATION, WAS NEW ZEALAND REP AT MOST RECENT ICAO LEGAL COMMITTEE MEETING

20. FOR DOHA, CHARTOUM: DOHA - YOU SHOULDHOULD BRIEF S. GAYED, PRESIDENT, CIVIL AVIATION HIGHER COUNCIL. KHARTOUM - YOU SHOULD BRIEF Y.SIRAG EL DIN, AIR TRANSPORT INSPECTOR. BOTH HAVE RECENTLY BEEN INFORMED BY LETTER ABOUT OBJECTIVES OF US INITIATIVE (SEE PARA 10). BOTH HAVE BEEN ACTIVE AT RECENT ICAO MEETINGS.

21. FOR CAIRO: YOU SHOULD BRIEF K. MOUSTAFA, DIRECTOR OF INTERNATIONAL CONVENTIONS AND AGREEMENTS BUREAU. MOUSTAFA IS ONE OF THREE VICE-CHAIRMEN OF ICAO LEGAL COMMITTEE.

22. FOR MONTREAL: UNLESS US REP TO ICAO PERCEIVES OBJECTION, ICAO COUNCIL PRESIDENT BINGAHI, AND LEGAL BUREAU HEAD GOMEZ JARA, AND UK, JAPAN, BRAZIL, LEBANON, ITALY ICAO COUNCIL REPS SHOULD BE ADVISED ABOUT US INITIATIVE. WE LEAVE TO YOUR DISCRETION WHETHER TO BRIEF, AND EXTENT OF BRIEFING, OF OTHER COUNCIL REPS.

23. FOLLOWING IS "STATEMENT OF THE USA ON THE USE OF THE GOLD FRANC TO EXPRESS THE LIMITS OF LIABILITY UNDER THE HAGUE AND GUATEMALA CITY PROTOCOLS (ARTICLE 22)," APPENDIX D TO OFFICIAL REPORT OF COUNCIL WORKING GROUP (WE EXPECT THIS REPORT WILL BE CIRCULATED TO ICAO MEMBER STATES BY DECISION OF THE ICAO COUNCIL THIS WEEK):

A. THE DELEGATE OF THE USA REPORTED TO THE COUNCIL
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WORKING GROUP THAT HIS GOVERNMENT HAD RECENTLY RECEIVED A LETTER (0-048) 7, 1975) FROM THE INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA) WHICH INDICATED THAT THE TRADITIONAL METHOD FOR EXPRESSING THE LIMITS OF LIABILITY,

IN "GOLD FRANCS" (ARTICLE 22 OF THE HAGUE AND GUATEMALA PROTOCOLS), NO LONGER WORKED IN AN ADEQUATE MANNER. THE IATA LETTER STATED THAT THIS IS DUE TO THE FACT THAT, BECAUSE OF ECONOMIC AND FINANCIAL DEVELOPMENTS IN THE PAST FEW YEARS, THE VALUE OF GOLD NO LONGER HAD THE CERTAINTY THAT IT HAD IN EARLIER YEARS. EXPRESSING LIMITS OF LIABILITY IN GOLD, THEREFORE, WOULD NOT PROVIDE FOR CERTAIN LIMITS AS IT HAD IN THE PAST.

B. THE IATA LETTER EMPHASIZED THIS PROBLEM WITH RESPECT TO THE GUATEMALA CITY PROTOCOL, AND RECOMMENDED THAT IT BE AMENDED DURING THE SEPTEMBER DIPLOMATIC CONFERENCE BY ADOPTION OF AN APPROPRIATE NEW CLAUSE IN SUBSTITUTION FOR THE "GOLD FRANC" CLAUSE. OF COURSE, THE CARGO PROVISIONS TO BE ADOPTED AT THE SEPTEMBER DIPLOMATIC CONFERENCE ALSO REQUIRED A METHOD FOR EXPRESSING THE LIMITS OF LIABILITY. IT COULD BE PRESUMED THAT WHATEVER METHOD WERE USED TO EXPRESS THE LIMITS FOR CARGO WOULD ALSO BE SUITABLE FOR THE GUATEMALA CITY PROTOCOL. CHANGING THE "GOLD FRANC" CLAUSE OF ALL OF THE WARSAW CONVENTION INSTRUMENTS AT THE SAME TIME IN SEPTEMBER WOULD AVOID A SITUATION IN WHICH THERE WERE CONFLICTS AS TO THE APPLICABLE LIMIT OF LIABILITY RESULTING FROM DIFFERENT METHODS FOR EXPRESSING THE LIMITS.

C. IT WAS THE UNDERSTANDING OF THE US DELEGATE THAT A LETTER SIMILAR TO THE ONE HIS GOVERNMENT HAD RECEIVED FROM IATA WAS BEING SENT TO A LARGE NUMBER OF ICAO MEMBER STATES.

D. EMPHASIS WAS BEING PLACED ON THIS ISSUE BECAUSE NO PREPARATORY WORK HAD BEEN UNDERTAKEN IN ICAO TO DRAW UP ALTERNATIVES TO THE "GOLD FRANC" CLAUSE, WHICH, NONETHELESS, WOULD HAVE TO BE ADDRESSED BY THE SEPTEMBER DIPLOMATIC CONFERENCE. A POSSIBLE ALTERNATIVE, FOR EXAMPLE, WOULD BE TO EXPRESS THE LIMITS OF LIABILITY IN SPECIAL DRAWING RIGHTS (SDRS) OF THE INTERNATIONAL MONETARY FUND (IMF). THE PASSENGER LIMIT IN THE GUATEMALA CITY PROTOCOL, WHICH IS 1,500,000 GOLD FRANCS, UNCLASSIFIED

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WOULD, IN THIS SITUATION, BE CHANGED TO 100,000 SDRS. OTHER LIMITS IN THE WARSAW CONVENTION INSTRUMENTS COULD BE CONVERTED AT THE SAME 15:1 RATIO. THE VALUE OF THE SDR IN A COUNTRY'S CURRENCY COULD BE DETERMINED ACCORDING TO THE METHODS USED BY THE IMF, SINCE MORE THAN 120 COUNTRIES WERE MEMBERS OF THE IMF. APPROPRIATE PROVISIONS FOR ANY STATE NOT A MEMBER OF THE IMF COULD ALSO BE INCLUDED.

E. THE DELEGATE OF THE UNITED STATES WISHED TO EMPHASIZE THAT HIS GOVERNMENT WAS NOT MAKING A FORMAL PROPOSAL WITH RESPECT TO A SUBSTITUTION FOR THE "GOLD FRANC" CLAUSE. HE ONLY WISHED TO STRESS THAT, IF THE SEPTEMBER DIPLOMATIC CONFERENCE IS TO BE SUCCESSFUL, A NEW CLAUSE WOULD HAVE TO BE ADOPTED, AND THAT NO PREPARATORY WORK

HAD YET BEGUN. IN ORDER TO ENHANCE THE SUCCESS OF DEVELOPING A CLAUSE THAT WOULD BE WIDELY ACCEPTABLE, HE THOUGHT IT WOULD BE NECESSARY IN MAY AND JUNE FOR A SUBSTANTIAL NUMBER OF COUNTRIES TO BE IN COMMUNICATION WITH EACH OTHER, TO PREPARE A JOINT PROPOSAL. THIS PROPOSAL WOULD HAVE TO BE SUBMITTED TO STATES SUFFICIENTLY IN ADVANCE OF THE SEPTEMBER DIPLOMATIC CONFERENCE SO AS TO RECEIVE ADEQUATE STUDY IN CAPITALS PRIOR TO DELEGATIONS' ARRIVAL AT MONTREAL.

24. FOLLOWING IS "AN APPROACH FOR SDR AS THE METHOD OF VALUATION OF THE LIMITS OF LIABILITY IN THE GUATEMALA CITY PROTOCOL," INFORMALLY CIRCULATED BY US AT APRIL MONTREAL MEETING:

1. REFERENCE TO GOLD FRANCS TO BE REPLACED BY AN EQUIVALENT VALUE OF SPECIAL DRAWING RIGHTS (SDR) OF THE INTERNATIONAL MONETARY FUND (IMF). THAT IS, IN THE EXISTING TEXT, WHERE REFERENCE IS MADE, FOR EXAMPLE, TO THE PER PASSENGER LIMIT OF LIABILITY OF 1,500,000 GOLD FRANCS, THIS WOULD BE REPLACED BY 100,000 SDRS. EXPLANATION: A. ON THE DATE OF ADOPTION OF THE GUATEMALA CITY PROTOCOL (MARCH 8, 1971) THE LIMIT OF LIABILITY FOR PASSENGERS WAS 1,500,000 GOLD FRANCS WHICH EQUALEJ APPROXIMATELY \$100,000 WHICH EQUALED 100,000SDRS (CURRNT VALUE OF 100,000 SDRS IN TERMS OF DOLLARS IS APPROXIMATELY \$123,000). B. IT SHOULD BE UNDERSTOOD THAT THE VALUE OF 100,000 SDRS IN TERMS OF ANY CURRENCY MAY VARY DAILY. FOR EXAMPLE, 100,000 SDRS UNCLASSIFIED

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EQUALED APPROXIIMATELY: \$120,000 ON JULY 1, 1974; \$119,000 IN AUGUST 1974 (AVERAGE MONTHLY RATE); \$118,000 IN SEPTEMBER 1974 (AVERAGE MONTHLY RATE); \$119,000 IN OCTOBER 1974 (AVERAGE MONTHLY RATE); \$121,000 IN DECEMBER 1974 (AVERAGE MONTHLY RATE).

2. VALUE OF A CURRENCY IN TERMS OF SDRS TO BE CALCULATED IN ACCORDANCE WITH THE METHOD OF VALUATION APPLIED BY THE IMF ON THE DATE OF JUDGMENT.

3. LIMITS OF LIABILITY FOR A COUNTRY NOT A MEMBER OF THE IMF TO BE CALCULATED IN THE COUNTRY'S NATIONAL CURRENCY IN ACCORDANCE WITH SPECIFICATIONS ESTABLISHED BY THAT COUNTRY.

25. FOLLOWING IS LETTER OF APRIL 7, 1975 TO DEPARTMENT FROM IATA CARRIERS:

A. THE FOLLOWING STATEMENT HAS BEEN APPROVED BY THE EXECUTIVE COMMITTEE OF IATA AND BY THE MEMBERS OF IATA NAMED BELOW, AND THEY HAVE AUTHORISED ME TO COMMUNICATE IT TO YOU ON THEIR BEHALF:

B. IATA AND ITS MEMBERS HAVE PARTICIPATED IN THE DEVELOPMENT OF THE GUATEMALA PROTOCOL TO THE WARSAW CONVENTION, WHICH PROTOCOL WAS OPENED TO SIGNATURE ON 8 MARCH, 1971, AND HAVE GONE ON RECORD AS FAVOURING ITS EARLY ENTRY INTO FORCE.

C. WE HAVE ALSO PARTICIPATED, TOGETHER WITH ATA AND THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, IN THE PREPARATION OF A SUPPLEMENTAL PLAN APPLICABLE IN THE UNITED STATES UNDER THE TERMS OF THE PROTOCOL. THE SUPPLEMENTAL PLAN, THE TEXT OF WHICH IS ATTACHED, IS ACCEPTABLE TO IATA.

D. THE GUATEMALA PROTOCOL, LIKE THE WARSAW CONVENTION, EXPRESSES A LIMITATION OF LIABILITY IN GOLD FRANCS AND THE SUPPLEMENTAL PLAN TAKES EFFECT ABOVE THAT LIMIT. AT THE TIME WHEN THE PROTOCOL WAS SIGNED, THE OFFICIAL PRICE OF GOLD WAS US '35.00 PER OUNCE. SINCE THEN, THERE HAS BEEN A RECENT TREND TO ABANDON THE OFFICIAL PRICE OF GOLD BY STATES. MOREOVER, AN ACTIVE FREE MARKET IN GOLD HAS DEVELOPED AND A WIDE GAP HAS OPENED BETWEEN OFFICIAL PARITIESAND THE FREE MARKET PRICE. ON 27 DECEMBER, 1974, THE LONDON FIXING WAS US \$195.50.

E. THIS NEW SITUATION HAS CREATED UNCERTAINTY AS TO THE LIMIT OF LIABILITY AS CONVERTED INTO NATIONAL CURRENCIES.
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WHILE THIS UNCERTAINTY CONTINUEE, IATA AND ITS MEMBERS ARE NOT ABLE TO CONTINUE TO SUPPORT RATIFICATION OF THE PROTOCOL OR TO COMMIT THEMSELVES TO A SUPPLEMENTAL PLAN.

F. WE ATTACH GREAT VALUE TO THE MAINTENANCE OF THE WARSAW SYSTEM WITH THE ADDITION OF THE GUATEMALA PROTOCOL, AND WE RESPECTFULLY URGE THAT EARLY ACTION BE TAKEN TO REMOVE THE PRESENT UNCERTAINTY. THIS MIGHT BE ACHIEVED BY AN AMENDMENT TO CLARIFY THE INTENTION OF THE GUATEMALA PROTOCOL WHICH WOULD STATE THAT THE LIMITS OF LIABILITY EXPRESSED THEREIN ARE TO BE CONVERTED INTO NATIONAL CURRENCIES AT THE OFFICIAL GOLD VALUE OF THOSE CURRENCIES AS AT THE DATE THE PROTOCOL WAS OPENED FOR SIGNATURE, 8 MARCH, 1971, ADJUSTED TO TAKE ACCOUNT OF OFFICIALLY

DECLARED DEVALUATIONS OR REVALUATIONS OF THE CURRENCY OF THE STATE WHERE THE ACTION FOR RECOVERY UNDER THE PROTOCOL IS INSTITUTED.

G. IATA AND ITS MEMBERS ARE PRESENTLY MAKING REPRESENTATIONSTO THIS SAME EFFECT TO OTHER GOVERNMENTS CONCERNED AND TO ICAO.

H. IT IS ESSENTTIAL THAT PRESENT UNCERTAINTY RELATING TO THE VALUE OF THE GOLD FRANC IN THE GUATEMALA PROTOCOL BE ELIMINATED. WHEN THIS IS ACHIEVED, IATA AND ITS MEMBERS OPERATING TO AND FROM THE UNITED STATES WILL AGAIN BE IN A POSITION TO GIVE SUPPORT TO RATIFICATION OF THE PROTOCOL AND TO PARTICIPATE IN THE SUPPLEMENTAL PLAN.

I. THE DIPLOMATIC CONFERENCE THAT WILL CONVENE NEXT SEPTEMBER UNDER THE AUSPICES OF ICAO WILL CONSIDER REVISION OF SOME PROVISIONS OF THE WARSAW CONVENTION. THE LIMIT OF LIABILITY IS FUNDAMENTAL TO THE CONVENTION AND CLARIFICATION OF THE GOLD FRANC CURRENCY EQUIVALENTS IS ONE OF THE MOST URGENT AND IMPORTANT MATTERS THAT

REQUIRE ATTENTION. IT WOULD BE GREATLY APPRECIATED IF
YOUR GOVERNMENT WOULD USE ITS BEST EFFORTS TO ENSURE
THAT THIS SUBJECT IS INCLUDED IN THE CONFERENCE AGENDA.

J. SIGNED BY: AER LINGUS, AIR CANADA, AIR FRANCE, AIR
INDIA, AIR NEW ZEALAND, ALITALIA, AMERICAN AIRLINES,
AVIANCA, BRANIFF, BRITISH AIRWAYS, CANADIAN PACIFIC,

CZECHOSLOVAKIAN AIRLINES, DELTA AIRLINES, EASTERN
AIRLINES, EL AL ISRAEL AIRLINES, ETHIOPIAN AIRLINES,
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FLYING TIGER, IBERIA, JAPAN AIR LINES, KLM-ROYAL DUTCH
AIRLINES, LUFTHANSA, MEXICANA DE AVIACION, NATIONAL
AIRLINES, PAN AMERICAN WORLD AIRWAYS, PHILIPPINE AIR
LINES, QANTAS, SABENA, SCANDINAVIAN AIRLINES SYSTEM, SOUTH
AFRICAN AIRWAYS, SWISSAIR, TRANSPORTES AEREOS PORTUGUESES,
TRANS MEDITERRANEAN AIRWAYS, TRANSWORLD AIRLINES, UNITED
AIR LINES, UNION DE TRANSPORTS AERIENS, VARIG. INGERSOLL
UNQUOTE KISSINGER

UNCLASSIFIED

<< END OF DOCUMENT >>

Message Attributes

Automatic Decaptioning: X
Capture Date: 26 AUG 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AVIATION AGREEMENTS, DIPLOMATIC COMMUNICATIONS, DIPLOMATIC DISCUSSIONS, MEETINGS, POLICIES
Control Number: n/a
Copy: SINGLE
Draft Date: 04 JUN 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE126571
Document Source: ADS
Document Unique ID: 00
Drafter: L/AF:FKWILLIS
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: D750191-0315
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750699/baaaalhe.tel
Line Count: 510
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
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Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: greeneet
Review Comment: n/a
Review Content Flags:
Review Date: 20 FEB 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <20 FEB 2003 by PhilliR0>; APPROVED <20 JAN 2004 by greeneet>
Review Markings:

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Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: <DBA CORRECTED> jms 971016
Subject: n/a
TAGS: EAIR, PORG, US, ICAO
To: BRUSSELS
ROME
Type: TE
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